

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SHARON TAYLOR, ET AL.

CIVIL ACTION NO. 2:07cv001

VERSUS

JUDGE DONALD E. WALTER

ACXIOM CORPORATION, ET AL.

AND

SHARON TAYLOR, ET AL.

CIVIL ACTION NO. 2:07cv0013

VERSUS

JUDGE DONALD E. WALTER

ACS STATE & LOCAL SOLUTIONS,
INC., ET AL.

AND

SHARON TAYLOR, ET AL.

CIVIL ACTION NO. 2:07cv0014

VERSUS

JUDGE DONALD E. WALTER

TEXAS FARM BUREAU MUTUAL
INSURANCE COMPANY, ET AL.

AND

SHARON TAYLOR, ET AL.

CIVIL ACTION NO. 2:07cv0017

VERSUS

JUDGE DONALD E. WALTER

SAFEWAY, INC., ET AL.

AND

SHARON TAYLOR, ET AL.

CIVIL ACTION NO. 2:07cv0018

VERSUS

JUDGE DONALD E. WALTER

BIOMETRIC ACCESS COMPANY, ET
AL.

AND

SHARON TAYLOR, ET AL.

CIVIL ACTION NO. 2:07cv0410

VERSUS

JUDGE DONALD E. WALTER

FREEMAN PUBLISHING COMPANY

**DEFENDANT TELECHECK SERVICES, INC.'S
RESPONSE TO PLAINTIFFS' STATEMENT OF VIOLATIONS
OF THE DRIVERS' PRIVACY PROTECTION ACT**

Pursuant to the Court's March 4, 2008 Order (Docket No. 193), TeleCheck Services, Inc. files its Response to Plaintiffs' Statement of Violations of the Drivers' Privacy Protection Act (the "Statement"), and re-urges its Motion to Dismiss¹ in response thereto. In the March 4 Order, the Court permitted Plaintiffs to file the Statement, which was to "stat[e] specifically the basis for their claims against each individual defendant stating the alleged obtainment, disclosure or use of that plaintiff's information from the Texas state motor vehicle records for a purpose not permitted under the DPPA." (March 4 Order at p. 2.)

Plaintiffs' Statement with regard to TeleCheck Services, Inc. does not allege any facts other than those already set forth in the First Amended Complaint, (Docket No. 3), or those taken from TeleCheck's agreement with the Texas DPS. The agreement is referred to in and central to the complaint, and properly considered on a Rule 12(b)(6) motion. TeleCheck attached it to its Motion to Dismiss. (Docket No. 25.) While Plaintiffs allege in the Statement that certain of the named-plaintiffs are aware of a business relationship with TeleCheck, and others are not, this allegation does not materially depart from the allegation in the complaint that TeleCheck "may have a

¹ TeleCheck's Motion to Dismiss was filed on March 28, 2007. (Docket Nos. 23 and 25.) Plaintiffs responded to TeleCheck's motion on April 11, 2007. (Docket No. 62.) TeleCheck filed its reply in support of its motion on April 20, 2007. (Docket No. 85.) In addition, TeleCheck filed a notice of supplemental authority in support of its motion on May 31, 2007. (Docket No. 113.) TeleCheck's motion is fully briefed and ripe for the Court's consideration.

permissible use under the DPPA for obtaining 'personal information' for some of the people in the database" of the Texas DPS. (Compl. ¶ 70.) In any event, this allegation is not relevant to their legal theory that the defendants must have contemplated an immediate use of each piece of information obtained. (Statement at p. 80.) Plaintiffs continue their untenable view that entities such as TeleCheck may only purchase driver information from the Texas DPS on a case-by-case basis, and may not purchase the information in bulk. (*Id.*) But Plaintiffs do not challenge the permissible purposes TeleCheck certified to the Texas DPS for its obtainment and use of the driver information.

As set out in TeleCheck's motion to dismiss and its supporting papers, (1) under the statutory construction doctrine of "the expression of one thing is the exclusion of the other," there is no federal or Texas law prohibiting the Texas DPS from selling this information in bulk unless it is for "surveys, marketing or solicitations," which uses are not at issue here; (2) Plaintiffs do not challenge the permissible purposes for which TeleCheck obtained the driver information, and which purposes it certified to the Texas DPS; (3) TeleCheck's legal position is supported by the plain language of the statute, principles of statutory construction, case law, and legislative history; (4) Plaintiffs cannot allege facts evidencing a knowing violation of the DPPA; (5) Plaintiffs fail to allege actual damages; and (6) Plaintiffs lack standing because they have not been injured in fact. Because the allegations contained in the Statement do

not alter TeleCheck's pending Motion to Dismiss, TeleCheck hereby re-urges its motion.

Respectfully submitted,

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By: /s/ Jodi Emmert Zysek

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CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this 18th day of April, 2008 with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Jodi Emmert Zysek